COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 21, 2001

APPLICATION OF

DELMARVA POWER & LIGHT COMPANY CASE NO. PUE000086

For Approval of a Plan for
Functional Separation (Phase II)

ORDER ON FUNCTIONAL SEPARATION

On December 21, 2000, Delmarva Power & Light Company ("Delmarva" or "the Company") filed an application with the State Corporation Commission ("Commission") in Case No. PUE000086 pursuant to § 56-590 of the Code of Virginia, for approval of the second phase[1] ("Phase II") of its plan for

[1] In this docket, the Commission has previously considered certain aspects of Delmarva's plan for functional separation, including the divestiture of the Company's electric operating units. See Final Order entered June 29, 2000, in Case No. PUE000086, 2000 S.C.C. Ann. Rept. 499. As noted in the June 29, 2000 Order, Delmarva agreed in a Memorandum of Agreement ("MOA") between it and the Staff, among other things, that: (i) in conjunction with its divestiture of its generation assets, it would reduce its base rates for its Virginia customers cumulatively by $727,542, in intervals linked to the completion of each phase of its proposed three phases of generation divestiture; (ii) it would not seek an increase in its production (non-fuel), transmission or distribution rates prior to January 1, 2001; (iii) it would waive its rights to collect any wires charge calculated by the Commission pursuant to § 56-583 during any period in which such collection would otherwise be authorized under the Virginia Electric Utility Restructuring Act; (iv) following the earlier of January 1, 2001, or the first day of the month preceded by an interval of at least 15 days following the date of Total Divestiture, Delmarva's fuel factor would reset at $0.021 per kWh, which factor would remain in effect at least until January 1, 2004, and that the action to reset such fuel rate would be accomplished by separate application to the Commission made pursuant to § 56-249.6; (v) effective January 1, 2004, and subject to the conditions for applicability set forth in the MOA therein, Delmarva's fuel factor should be modified pursuant to the Rate Case Protocol (appended as Attachment 1 to the MOA) established by Staff and Delmarva, based upon (a) Delmarva's 1999 generation mix, and the (b) Fuel Index

functional separation as required by Virginia Electric Utility Restructuring Act ("the Act" or "Restructuring Act") Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia. The Restructuring Act requires that the Commission complete its review of proposed plans of separation by January 1, 2002.

A function of our June 29, 2000, Order in the first phase of this proceeding was to approve the transfer by Delmarva of its generation assets to affiliated and non-affiliated companies. Most of the plants transferred are located outside the Commonwealth.[2]

The Commission promulgated rules[3] for functional separation required by the Act. As required by these rules, the Company filed a cost of service study for the twelve months ended

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Procedure (Attachment 2 to the MOA); (vi) as of the earlier of the first day of the month preceded by an interval of at least 15 days following the date of Total Divestiture or January 1, 2001, an unrecovered fuel balance of (Fn. 1 cont.) $892,921 would be recovered over a 24 month period, subject to Commission approval under a separate application by Delmarva pursuant to § 56-249.6; (vii) Delmarva's capped rate established pursuant to § 56-582 and the provisions of the MOA shall be deemed the Company's default rate pursuant to § 56-585 whenever Delmarva is a provider of default service during any period in which capped rates are also in effect.

The Commission accepted these provisions as in the public interest, but deferred ruling on the Company's participation in PJM as the Company's regional transmission entity ("RTE"). The Company's request to participate in PJM is currently the subject of pending Case No. PUE010353.

[2] For a discussion of the significance of plant location, see our Order on Functional Separation entered in Application of The Potomac Edison Company d/b/a Allegheny Power, For approval of functional separation plan (Phase II), Case No. PUE000280, slip op. (December 20, 2001.)

[3] Regulations Governing the Functional Separation of Incumbent Electric Utilities under the Virginia Electric Utility Restructuring Act ("Rules"), 20 VAC 5-202-10 et seq., adopted in Case No. PUA000029.

December 31, 1999. Delmarva supplemented its application on April 16, 2001, and again on June 29, 2001.

In addition, as part of its application, Delmarva filed proposed retail access tariffs which, according to the Company, contained certain revisions and additions to its current retail electric service tariffs, workpapers describing the development of its unbundled rates, proposed tariff changes relating to the retail choice, and a proposed electricity supplier agreement that would govern the relationship between alternative energy suppliers ("CSPs") and Delmarva for the CSPs' provision of competitive generation service in the Company's territory. The Company represented that upon approval by the Commission, these rates and related tariff provisions would become effective January 1, 2002, and would replace the Company's current tariff "S.C.C. Va. No. 7 -- Electric."

In its Order dated July 6, 2001, the Commission directed the Company to provide notice to the public and established a procedural schedule for the filing of comments or requests for hearing on Delmarva's application. In that Order, the Commission directed its Staff to investigate Delmarva's application and file a Report on or before September 28, 2001, detailing its findings and recommendations. Ordering Paragraph (9) of the July 6, 2001 Order provided that the

Company and any interested person could file Responses to the Staff's Report on or before October 12, 2001.

On October 18, 2001, the Company, by counsel, filed its proof of newspaper publication, together with proof of its service on local governmental officials.

On September 14, 2001, AES NewEnergy, Inc., ("AES" or "NewEnergy") filed its Notice of Participation in this matter, together with its Initial Comments ("Comments") on Delmarva's application. AES did not request a hearing, but reserved its rights to participate further in this proceeding.

The Division of Consumer Counsel, Office of the Attorney General ("AG") gave notice of its intent to participate in the proceeding and filed its comments herein on September 14, 2001. The AG also did not request a hearing on this matter.

On September 18, 2001, the Commission Staff, by counsel, filed a Motion requesting an extension of time in which to file its Report in this matter. In its Motion, the Staff noted that it had discussed with Delmarva the inclusion of certain accounting adjustments in the Company's cost of service study that could require the revision of Delmarva's cost of service and unbundled rates. Staff alleged that it required additional time in which to receive and analyze these revisions and to prepare its Report. Staff asked that it be granted an extension of time in which to file its Report to October 22, 2001, and

also asked that the date by which responses to its Report could be filed be extended to November 7, 2001. Staff represented that Delmarva and AES did not oppose Staff's request for an extension and that the AG supported the extension request.

On September 25, 2001, the Commission granted the Staff's Motion. It extended the date by which the Staff could file its Report to October 22, 2001, and the date by which responses to the Staff Report could be filed to November 7, 2001.

On October 18, 2001, Delmarva filed its Response to AES' September 14, 2001 Comments. Among other things, the Company noted that it had been granted a waiver by the Commission to utilize the "Last-in" enrollment rule for situations where multiple enrollments are received for a customer. It also responded to NewEnergy's comments on the electricity supplier agreement. In its October 18 Response, the Company agreed to amend its definition of "credit resources" to include a security bond. Delmarva further asserted that the language AES requested to be placed in Article 2.7 -- Communications and Data Exchange was unnecessary since Delmarva is required to comply with Commission orders on communications and data exchange. With regard to Article 3.1(g) of its Electricity Supplier Agreement ("Supplier Agreement"), the Company proposed to revise its tariff to provide:

> (g) The Supplier will comply with any and all information and data transfer protocols that may be adopted by the Company that are set by, and from time to time modified by, the Commission. The Supplier will comply with any and all additional information and data transfer protocols that may be adopted by the Company from time to time, subject to such rights as the Supplier may have to challenge any such protocols in the appropriate forum.

Delmarva characterized its provisions governing Commencement and Termination of Agreements of its Supplier Agreement as almost identical to those electric supplier agreements accepted by the Delaware, Maryland and New Jersey Commissions. It supported a 30-day termination period for CSP agreements.

The Company also addressed NewEnergy's concerns relating to Delmarva's procedures for performing wholesale load obligation allocation, settlement and balancing found in its electricity supplier agreement, as well as various other issues raised by AES.

On September 18, 2001, the Company filed a revised cost of service study and unbundled rates with the Commission.

On October 22, 2001, the Staff filed its Report in this matter. In its Report, among other things, the Staff proposed sixteen additional revisions to the Company's Virginia jurisdictional cost of service study that affected the Company's operating revenues, operation and maintenance ("O&M") expenses,

taxes and rate base items. These adjustments were summarized on Attachment 1 of Part B to the Staff Report.

The Staff Report also provided an analysis of the Company's unbundled tariffs. Staff agreed with Delmarva's proposed class cost of service methodology, with some exceptions. Specifically, the Staff provided an exhibit (EBR-3 to Attachment C of the Staff Report) showing the effect of allocating 50 percent of metering and billing related costs to the production and transmission function just as Staff's consultants did in Case No. PUE000584, Virginia Electric and Power Company's ("Virginia Power's") functional separation case. Staff noted that it did not take exception to the Company's Energy for Tomorrow ("EFT") Rider[4] or Net Energy Metering ("NEM") Rider[5] since in Staff's view, these riders do not affect rate cap provisions.

The Staff opposed the Company's proposals to reduce the credits available under the Peak Management Rider ("PM") for new contracts executed after January 1, 2002, from $50 per kW per year to $21.90 per kW per year. Staff noted that the reduction

[4] Delmarva proposes to activate the EFT program for economic purposes for up to 15 days out of the existing 30-day limit.

[5] In the case of the NEM Rider, Delmarva presently offers its NEM customers both supply and delivery credits through unbundled rates. The Company proposes to expand the credits for distribution service to customers who produce excess energy and who have contracted for supply services from a third party supplier.

in the level of existing credits was tantamount to a rate increase, and was prohibited by the Restructuring Act.

The Staff also commented on the Company's retail access rules and regulations, tariff charges, and fees related to retail choice as well as Delmarva's proposed electric supplier agreement. Staff noted that on July 20, 2001, Delmarva revised its filing in an effort to comply with the Commission's June 19, 2001 Order in Case No. PUE010013, adopting rules governing retail access. According to Staff, the July 20 filing supplemented the electric Supplier Agreement by adding a Virginia Customer List Agreement and a Virginia Usage Data Agreement.

Staff reported that as part of Delmarva's July 20 filing, the Company requested a waiver of the requirement of Rule 20 VAC 5-312-80 F, that specifies that if more than one request for a change in a customer's competitive service provider is received from a customer during one enrollment period, the first request received will be the request honored. Delmarva asked for approval to honor the last request received during any enrollment period, and sought authority to disregard any previous requests received during that period. The Commission granted Delmarva's waiver request on August 28, 2001, in Case No. PUE010366.

Staff further recommended that a majority of Delmarva's Supplier Agreement should be integrated into S.C.C. Va. No. 7 -- Electric or otherwise incorporated into a Supplier Coordination Tariff. Staff recommended that the Commission remove from the Supplier Agreement Article 3 (Representations and Warranties), Article 20 (dealing with the Limitation of Liability), and Article 21 addressing indemnification, as these provisions address generic contract rather than tariff issues.

With regard to the minimum stay requirements of Delmarva's proposed rules and regulations of service, Staff recommended that Delmarva revise its tariffs to permit Large General Service-Secondary ("LGS-S") and General Service-Primary ("GS-P") customers to return to the Company's standard offer service (capped rate service) if these customers wish to discontinue receiving electric supply from a CSP and return to capped rate service. Staff agreed that Delmarva's Market Price Supply Service should be an option and not mandatory for LGS-S and GS-P customers returning to the Company for electric supply service.

Staff recommended that the following language appearing in Standard Offer Service sections found in Tariff Leaf Nos. 4, 35, 36a, 39, 39b, 39e, 42, 46, and 46a should be revised to conform with Rule 20 VAC 5-312-80 Q adopted in Case No. PUE010296 as the Commission's Rules Governing Customer Minimum Stay Periods:

> Once a Customer has purchased its electric supply services from an Electricity Supplier, other than the Company, and then returns to the Company for its electric supply services, the Customer must remain with the Company's Standard Offer Service for at least twelve (12) billing months before the Customer may be served by another Electricity Supplier beginning on the Customers' scheduled meter reading date.

Staff noted that Delmarva's S.C.C. Va. Tariff No. 7, Leaf No. 4a, Part E provides that non-interval and interval metered customers would be charged for additional requests for usage data after the initial data is provided to the customer as part of the retail competition enrollment package. Staff reported that the Company wished to remove the charge to avoid an issue with the rate cap limitations established by the Act.

Staff recommended that the Company's proposals to increase charges for alternative metering equipment should be revised to reflect actual costs for alternative metering equipment and that Delmarva's proposed charges for unscheduled meter readings for interval and non-interval metered customers, and for meter testing more than once each 24 months on non-interval meters, appeared to be barred by the capped rate provision. Staff reported that it understood that the Company intended to withdraw these proposed charges.

Staff noted that the Company's proposals for off-cycle meter reading for CSPs appeared to be supported by cost data.

It also commented that the Company's provision regarding supplier change notification and drop notifications did not permit the transfer of supply service on any date other than the standard meter reading date. Staff stated that the Company's current billing system was unable to support off-cycle meter reading supply service requests. It reported that the Company had offered to keep track of the number of off-system supplier change requests for future consideration by the Commission.

On the issue of load profiling, balancing, load reconciliation, and transmission scheduling, Staff commented that one portion of the Delmarva tariff governing load profiling, load balancing, load reconciling, and transmission scheduling was not subject to PJM oversight. That portion relates to Delmarva's balancing of hourly load among its native load and with each CSP through the use of load profiles. Staff explained that since Delmarva is the party responsible for comparing each CSP's forecasted load profile with actual consumption, CSPs may be "at the mercy" of Delmarva to measure and assess any financial settlement. Staff included language as Attachment D (JRB-3 to Part C of the Report) to resolve this issue. Staff further recommended that the Commission consider permitting Delmarva to refer to the PJM documents and website citations for these documents within their tariffs as opposed to replicating them in the Supplier Agreement.

Staff proposed that Article 1 of the Supplier Agreement be revised as to the "Credit Amount" necessary to protect the Company should the CSP default. Staff reasoned that since the Company is not at risk for the customer's payments to the CSP, the definition of "Credit Amount" should be changed to delete the reference to customer payments to the CSP.

With regard to termination of supplier agreements between the Company and the CSP after the cessation of the CSP service to Delmarva customers, the Staff recommended that the period before termination of the agreement be lengthened to 60 days.

With regard to Delmarva's proposed supplier fees, Staff noted that the Company had proposed to reduce its general administration fee to $50 per MW per month and to permit this fee to remain fixed for two years. Staff did not oppose the Company's revised fees.

On November 7, 2001, the Company filed its Response to the Staff Report, together with its further revised unbundled tariffs, rates, fees, charges, supplier agreement, and terms and conditions of service. The Company noted in its Response that it was withdrawing its proposal to reopen the PM Rider Schedule for new customers with reduced credits. The Company represented that consistent with Staff's recommendation, it has changed the contract term for the PM rider to one year and retained the existing requirement that current customers receiving default

service must purchase power from Delmarva to receive the credit. The bulk of Delmarva's comments focused on the Company's rules and regulations of service applicable to Delmarva's relationship with CSPs and customers who choose to take electric supply service from CSPs.

Delmarva asserted that it could not permit customer switches to CSPs on the basis of special meter readings using its existing billing system. It explained that off-cycle meter reading was used only to generate final bills to customers whose service was being terminated. It stated that its billing cycle would have to be modified to accommodate switching a customer to a different service provider without generating a final bill. The Company observed that based on its experience in other jurisdictions, it did not expect to receive many, if any, requests to switch Virginia customers to a different CSP based on a special meter reading. The Company represented that if requests to switch during an off-cycle meter reading occur after January 1, 2002, in Delmarva's Virginia service area, the Company would re-examine the cost and complexity of modifying its billing system to accommodate such requests. It contended that it should not be required to disrupt its existing billing system and incur unnecessary costs to provide for requests that may never occur. Delmarva agreed to track the number of such

requests to switch CSPs following an off-cycle meter reading and to report them to the Staff.

On the issue of the Form Supplier Agreement, Delmarva noted that its form agreements were identical to the forms approved by the utility regulatory authorities in New Jersey and Delaware. The Company noted that without an approved contract, the Company and each CSP would have no choice but to negotiate each individual contract, leading to delay in the introduction of competition. The Company proposed that its Electricity Supplier Agreement be a part of the new Delmarva tariff volume "S.C.C. Va. No. 8 -- Electric".

With regard to Staff's proposal to remove Article 3 (Representations and Warranties), Article 20 (Limitation of Liability) and Article 21 (Indemnification) from the Company's Electricity Supplier Agreement, the Company maintained that these provisions were fair to CSPs and the Company and were generally reciprocal. The Company claimed that the absence of these provisions will create the potential for dispute. Delmarva urged the Commission to approve its proposed Electricity Supplier Agreement, including Articles 3, 20, and 21, in its new S.C.C. Va. No. 8 -- Electric.

With regard to the offer of Market Priced Supply Service ("MPSS") to customers who, after receiving service from a competitive supplier, return to Delmarva, the Company noted that

it had revised its tariffs to make clear that customers may return to standard offer capped rate service and that these customers also have the option of receiving MPSS upon returning to electric supply service from the Company.

Delmarva represented in its comments that it had conformed its tariff to the provisions of Rule 20 VAC 5-312-80 Q of the Rules Governing Customer Minimum Stay Periods. As revised on November 7, 2001, according to the Company, its tariffs would permit customers whose annual peak demand is greater than 500 kW to have the option of receiving MPSS service with a minimum stay requirement of only one month instead of 12 months.

Delmarva noted that Staff recommended "actual cost based rates" for alternative metering equipment. Delmarva noted that it added the word "actual" to its Leaf No. 15, and removed the proposed changes in charges for testing interval meters from its November 7, 2001, revised tariff.

With regard to energy balancing, Delmarva disagreed that a gap existed with respect to some instances of energy balancing when Delmarva balances hourly load among its native load and with each competitive supplier through the use of load profiles. However, Delmarva represented that it included the first section of Staff Attachment D (JRB-3) of Part C to the Staff Report in its further revised tariffs to make clear that Delmarva is required to comply with Rule 20 VAC 5-312-100. It contends that

its "Procedures for Determination of Peak Load Contributions and Hourly Load Obligations for Retail Customers," has been approved by the Federal Energy Regulatory Commission and sufficiently addresses Staff's concerns. Delmarva argued that its Supplier Operating Manual provided a detailed description of the procedures for determination of peak load contribution and hourly load obligations for retail customers and was available on Conectiv's web site at www.conectiv.com. Delmarva also commented that PJM documents and agreements are available on the PJM web site and that it keeps its electronic links current with PJM changes to these agreements.

On the issue of credit amounts, Delmarva explained that it is proposing that the credit amount due from CSPs be based on two months' of a customer usage multiplied by the Price-to-Compare to protect itself from default risks when a CSP ceases to provide service to the customer and does not give adequate notice to Delmarva, so that Delmarva, as the default service provider, must take over the responsibility of acquiring power to meet the customer's needs. The Company contended that it was likely that a competitive service provider would cease serving a customer to avoid unusually high wholesale energy prices, so Delmarva would be exposed to the risk of being compelled to secure very high priced wholesale power to meet the customer's needs while serving that customer through capped rates that may

be lower than current wholesale power prices. The Company cited the default by two competitive suppliers on the PJM system who had inadequate credit support as proof that the credit support provisions it proposed should be accepted.

Delmarva agreed that its tariff provision addressing the termination of its agreement with a CSP should be further revised to provide for termination 60 days after the CSP has ceased providing service, as Staff proposed.

On November 7, 2001, AES filed its Reply Comments on the Retail Tariff Issues ("Comments"). In its Comments, NewEnergy supported Staff's proposals regarding the return to capped rate supply service. AES noted that given the lengthy transition in Virginia to competitive retail markets, the withholding of capped service to shopping customers could well represent a barrier to retail choice.

AES also supported Staff's recommendations regarding modification of Delmarva's retail and suppliers tariff to be consistent with any minimum stay provisions approved in Rule 20 VAC 5-312-80 Q. AES proposed tariff language, that it urged, be inserted in each applicable rate schedule to promote full competition by all suppliers.

AES supported Staff's recommendation that the "credit amount" found in Delmarva's supplier agreements should exclude references to amounts paid by the customers to the CSPs. AES

noted that PJM serves as a risk sharing pool, that includes CSPs, and that as the market shares for competitive suppliers increases over time, their share of these costs will continue to increase. AES observed that this obligation is a wholesale obligation, and a wholesale solution has been crafted by PJM to avoid liability in the future.

AES continued to challenge the Company's proposed charges for historical usage data and general administrative fees. AES further recommended that any customers on the PM contracts should have the option to remain on the PM contract through the end of the PJM planning period or to the end of the PJM primary contract term.

AES supported Staff's recommendation to create a Supplier Coordination Tariff to permit CSPs to address supplier issues directly with the Commission. It asked that Delmarva's waiver of the "First In" enrollment requirement not be permanent.

As to the Load Profiling, Balancing and Reconciliation matters at issue, NewEnergy noted that its comments were focused on those elements not controlled by PJM. It stated that the determination of line losses, peak load contribution, allocation of energy obligations for load serving entities in Delmarva's service area and the determination of the PJM locational market price zone used in the reconciliation process are all processes controlled by Delmarva. AES asserted that if the Commission is

unwilling to have these provisions governed by the Supplier Tariff, then the Company should report any changes to such provisions to Staff and all licensed suppliers in Virginia and provide adequate time to comment on and respond to such changes.

On November 14, 2001, Delmarva filed a motion to approve its unbundled rates, effective January 1, 2002, and requested that the Commission defer to a subsequent order the resolution of non-rate issues in the proceeding. This Motion was subsequently withdrawn by the Company.

On November 29, 2001, the Commission Staff filed a Motion Requesting Leave File Reply, together with its "Staff Reply to the Response of Delmarva Power & Light Company and the Reply Comments of AES NewEnergy, Inc., on Staff's October 22, 2001 Report" ("Staff Reply").

On November 30, 2001, the Commission entered an Order that granted the Staff's November 29, 2001, Motion and received Staff's Reply; authorized AES, the AG, and other interested parties to file any further response to the Staff's Reply on or before December 7, 2001; and directed Delmarva to file any further response to the Staff's Reply on or before December 14, 2001.

On December 6, 2001, AES filed its "Reply to the Responses of Staff dated November 29, 2001" ("Reply") with the Clerk of the Commission. In its Reply, among other things, AES commented

that the PM Rider contract term as specified in Delmarva's November 7, 2001 tariff, actually referred to a term of one year or more and should be revised. AES supported Staff's recommendation that all PM contracts be limited to only one-year renewals. NewEnergy observed that any multiple year PM contracts could act as a barrier to competition. AES recommended that any new or existing utility PM contracts should be honored by the Company for an annual period, consistent with the PJM planning year (June 1 through May 31), regardless of who the supplier is, and consistent with the PJM curtailment program.

NewEnergy suggested that the following language should be incorporated into the PM Rider, since, according to it, the utility is currently entitled to continue to receive the capacity benefits on the Rider through the end of the annual PJM Planning Period:

> This Rider is also available to any Customer taking its electricity supply from an Electricity Supplier and any credits/payments, load reduction amounts, and mechanisms for implementing or ending load reduction events would be per the terms of this PM rider, and the benefits of such load reduction (such as load reduction credits that may be available pursuant to the rules of the PJM Interchange, LLC) would be for the account of the Company. If PJM or its successor reduces or eliminates the benefits of ALM to Delmarva due to the customer's enrollment with the Electricity Supplier, then the PM Rider contract will be

> subject to termination at Delmarva's sole discretion on 30 days notice.

NewEnergy agreed with Staff's position set out in Staff's Reply on the fairness of Articles 3, 20, and 21 in the Supplier Agreement. AES characterized Article 20.3, in particular, as one-sided.

NewEnergy continued to assert that the Company must further modify its retail tariff and supplier tariff to be consistent with the minimum stay provisions approved in Rule 20 VAC 5-312-80 Q. It commented that Delmarva has still not removed provisions throughout its tariff that restrict which suppliers a customer may contract with, and further restrict how long a customer can contract with a supplier. NewEnergy sought clarification that Section 6.1.1 of the Supplier Coordination Agreement (Additional Event of Default) and the associated section 6.2.1 have been removed. According to NewEnergy, these provisions go beyond the 12-month minimum stay provision embodied in the Commission's directives.

AES commented that Delmarva has retained numerous references in the Company's retail tariff that restrict a customer from returning to the same supplier, after being returned to the utility for any required minimum stay period. It cited the last sentence in Second Revised Leaf No. 4, the last sentences in numbered paragraphs 1 and 2 on the Original

Leaf No. 4a, and in paragraph 2 of the Market Priced Supply Service ("MPSS") in Section XVIII. AES agreed with the Staff's Reply that such restrictions were inconsistent with an earlier Commission Order.

NewEnergy supported the Staff's recommendation that "Credit Amount" should be defined to exclude any references to amounts paid by customers to the CSP or to any amounts equal to the usage multiplied by the Price to Compare. AES maintained that a credit amount equal to two months of customer payments to the competitive service provider, and a credit amount equal to two months of customer usage multiplied by the Price-to-Compare essentially represent the wholesale costs of serving the customer and are roughly the same.

AES dismissed Delmarva's claims that the Company is at risk for CSP defaults, and notes that if the customer returns to the utility, the Company will receive compensation from the customer through its tariff rates for its wholesale electricity costs incurred when serving the customer. AES noted that the default situations cited by Delmarva represented wholesale default obligations shared by Load Service Entities ("LSEs") in PJM, including wholesale marketers, CSPs and utilities. It asserted that PJM has taken action to ensure that all LSEs provide adequate credit assurances in the future.

NewEnergy continued to oppose Delmarva's General Administrative fees, asserting that these fees were not representative of a new service for suppliers. It also opposed Delmarva's historical usage data fee.

On the issue of Load Profiling, Balancing and Reconciliation, AES continued to object to Delmarva's ability to change its prevailing Operating Manual without adequate notice to and comment by stakeholders. It argued that merely posting changes on the Web site would not grant any party an opportunity to oppose or delay a proposed change that could significantly impact the retail energy price, or capacity allocations set by Delmarva. AES urged the Commission to retain jurisdiction over the procedure in order to protect the interests of suppliers and to incorporate the operating manual into the Tariff.

With regard to billing disputes, AES maintained that Delmarva had not removed language stating that any bill rendered to a supplier shall be deemed conclusive and binding on the supplier within 20 calendar days. AES asserted that Section 12.5 of the Supplier Agreement should be amended to remove this requirement.

In its December 14, 2001 Further Response, Delmarva agreed to amend its Peak Management contracts to provide for only a one-year renewal. It opposed the Staff's recommendation in Staff's November 29 Reply that Delmarva should be required to

change its billing system in the future to provide for off-cycle supplier switches. It reiterated that it has received few requests in other jurisdictions for off-cycle supplier switches, and renewed its offer to report such requests to the Commission. The Company noted that modification of its billing system to accommodate off-cycle switches would be costly.

With regard to the Form of the Supplier Agreement, Delmarva maintained that the language used in Article 3, Article 20, and Article 21 are identical to the language in analogous contracts in other Delmarva jurisdictions. The Company asserts that if a supplier believes it is being treated unfairly under the agreement it may complain to the Commission.

On the issue of Load Profiling, Balancing, and Reconciliation, the Company maintained that reference to a specific portion of the Operating Manual is not appropriate because the document in its entirety relates to the calculation of load obligations under PJM's Customer Choice Program. Delmarva represented that it would post line loss factors used in its balancing process to the Company's Web site.

With regard to the Credit Amount, Delmarva explained in its Further Response that its provisions relate to power purchase costs that it would incur as a default supplier when a competitive supplier fails to provide power to the customers. It asserted that PJM's credit requirements would not protect the

Company in such a situation. It urged the Commission to approve its credit provisions.

Delmarva responded to the Staff and AES' concerns about minimum stay provisions by noting its concern that CSPs will game the system by providing service to retail customers only during certain periods of the year that provide a cost advantage to CSPs. It maintained that its tariff language discourages this undesirable practice by providing that a customer cannot return to its previous CSP after a minimum stay period but can only take service from another CSP. The Company defended Article 6.1.1 and 6.2.1 of its tariffs by noting that they limit the type of deliberate "gaming" by suppliers that seeks to shift high costs of supplying retail customers during peak periods to the utility, while serving the same retail customers during times when costs of purchasing electric for resale are much lower.

The Company defended its historical usage data fee by noting that all suppliers will have free access to the historical usage included in the "opt out" customer list. According to the Company, historical usage data fees will be applicable only to CSPs who have not been electronic data interchange certified or require supplemental data and where Delmarva must manually process a customer release form and mail the requested data. Delmarva asserted that it proposed its

general administrative fees to cover the incremental costs of providing new services to CSPs. It urged the Commission to approve its fees.

NOW THE COMMISSION, having considered Delmarva's application, the supplemental filings thereto, the comments on the application, the Staff Report, and the Responses and Replies thereto, together with the applicable statutes and rules, finds that Delmarva's revised cost of service study filed on September 18, 2001, incorporating Staff's adjustments to the Company's cost of service, together with the Company's unbundled retail service tariffs, supplier agreements and terms and conditions of service filed on November 7, 2001, as further modified below should be accepted as supported by the record.

We further find that the Staff should continue to monitor Delmarva's compliance with our Regulations Governing the Functional Separation of Incumbent Electric Utilities under the Virginia Electric Utility Restructuring Act, 20 VAC 5-202-10 et seq., adopted in Case No. PUA000029. To this end, we will instruct our Staff, as necessary, to conduct audits and reviews of the Company's books, records, and work papers and conduct meetings to ensure compliance with § 56-590 of the Code of Virginia and the regulations adopted in Case No. PUA000029.

A discussion of various additional modifications to the Company's tariffs, Electricity Supplier Agreement, and terms and

conditions of service as well as various issues raised by the proceedings participants follows.

Electricity Supplier Agreement

We will permit Delmarva to file its proposed Electricity Supplier Agreement, with certain revisions discussed herein as part of new Delmarva tariff volume "S.C.C. Va. No. 8 -- Electric". We decline to modify the provisions of the Agreement, addressing limitations on liability, representations and warranties, as well as the indemnification provisions. CSPs having a dispute with the Company over the administration of the terms of the Agreement may file a complaint and seek resolution of any unjust, unreasonable, or discriminatory application of the Agreement by Delmarva.

Switching of Customers to CSP at the Time of Special Meter Readings

Delmarva has opposed permitting customers to switch competitive energy suppliers at the time of special meter readings. It notes that its billing systems would have to be modified to accommodate switching of customers to a different service provider without generating a bill. It has offered to keep track of the number of off-cycle meter reading requests.

The Staff, in its Reply, has supported permitting customers to change suppliers at the time of special meter readings.

We recognize the complexities that may be involved in accommodating off-cycle switches to a CSP. However, we also recognize the value of permitting customers to switch suppliers more frequently. We will therefore require the Company to track the number of off-cycle requests to switch CSPs as well as customer complaints regarding such requests and report this information to the Division of Energy Regulation by May 1 and November 27 of each year. If the issue of off-cycle readings appears prospectively to be a source of customer complaints or an impediment to CSPs offering service, we will re-examine the issue at that time.

Minimum Stay Provisions in Delmarva's Tariffs

Delmarva asserts in its November 7, 2001 Response to the Staff Report that it has conformed its tariffs to the provisions of Rule 20 VAC 5-312-80 Q of the Rules Governing Customer Minimum Stay Periods. Both Staff and AES contend that this may not be the case. Staff and AES point to exclusionary language in Service Classifications R, R-TOU-ND, SGS-S, LGS-S, GS-P, RTP-F, PL, SL, ORL, X, and SPSS that provides that

> the Customer must remain with the Company's Standard Offer service for at least one (1) billing month after which, and beginning on the Customer's scheduled meter reading date, the Customer will be eligible to be served by an Electricity Supplier other than the Electricity Supplier who immediately served

> the Customer before the Customer returned to the Company's Standard Offer Service.

Under this provision, a customer exercising retail choice must stay for one billing month with the Company before switching to a supplier other than the supplier who had immediately served the customer before the customer returned to Delmarva's capped rate service. Restrictions of choice in this manner are not consistent with our ruling in our Minimum Stay Order entered in Case No. PUE010296. However, we support Delmarva's proposal that switches to a supplier may occur only at the scheduled meter reading date.

The Virginia Electronic Data Transfer rules and protocol define in detail how switching may occur, specifying notice periods and windows for customer switches. We will therefore require Delmarva to modify the last sentence of Standard Offer Service under the foregoing Service Classifications as follows:

> Once a Customer has purchased its electric supply service from an Electricity Supplier and then returns to the Company for its electric supply service, the Customer must remain with the Company's Standard Offer Service for up to one (1) billing month after which, and beginning on the Customer's scheduled meter reading date, the Customer will be eligible to be served by another Electricity Supplier.

Further, with respect to Sections 6.1.1 and 6.2.1 of the Electricity Supplier Agreement, we concur with AES that these portions of the agreement could cause a supplier to be

considered in default if the customer seeks a contract with a supplier for less than a year. These provisions are unduly restrictive. We understand the Company's concern that CSPs may attempt to game the wholesale market based on the seasonal price of wholesale electricity. However, if the Company finds that such gaming is occurring, it may collect sufficient data and present its case to the Commission for relief in accordance with Rule 20 VAC 5-312-80 R of the Minimum Stay Rules. Sections 6.1.1 and 6.2.1 should therefore be revised to eliminate the possibility that contract terms of less than one year in duration may be considered a default event for a CSP.

Credit Amounts

AES and Staff take issue with Delmarva's definition of "Credit Amount" found in the Company's Electricity Supplier Agreement. They contend that the calculation of the credit amount based upon the greater of the estimated usage for a two month period of Supplier's customers in the aggregate multiplied by the applicable "Price to Compare" or "Shopping Credit" for generation is redundant with credit arrangements CSPs now undertake with PJM for wholesale suppliers. We agree with Staff and AES, and will direct Delmarva to revise this definition so that a CSP must supply credit sufficient to secure the delivery service it receives from Delmarva and not the upstream wholesale supplies.

Load Profiling, Balancing, and Reconciliation

Delmarva has revised its load profiling, balancing, and reconciliation portions of its Electricity Supplier Agreement, i.e., Article 9. Staff contends in its Reply Comments that further revision of this portion of the Agreement is necessary.

We agree. As Staff has noted in its Reply, Delmarva's Agreement does not identify the line loss percentages employed in the load balancing calculation for each appropriate voltage level in its tariffs. We find it appropriate for Delmarva to revise Article 9 to identify the line loss percentages used in the load balancing calculation for each appropriate voltage level in the Agreement rather than relying on Delmarva's Web site postings. This is critical information and should be readily available as part of the Electric Supplier Agreement being approved herein.

Peak Management Program

Staff and AES have recommended that all contracts under the PM contracts be limited to only one-year renewals. Delmarva has agreed to this revision. Delmarva's tariffs (Leaf No. 54) should be revised to reflect this change.

We, however, decline to adopt AES' proposed tariff language for the closed PM Rider found on page 2 of AES' December 6 Reply. The issue of wholesale generation credits available to Delmarva when a customer changes from one CSP to another is more

properly addressed through PJM and its procedures than as part of the PM Rider tariff before us.

Billing Disputes

AES complains in its December 6, 2001 Reply that Delmarva has not removed language in § 12.5 of the Electricity Supplier Agreement providing that any invoice shall be deemed conclusive and binding on the CSP within 20 calendar days. We note that § 12.5 permits CSPs to challenge invoices and clarifies when payment is due. Further, page 8 of AES' September 14, 2001, Comments requests the Company to amend § 12.5 to state that suppliers should pay within 20 calendar days from the rendering of the invoice. It appears that Delmarva has agreed to NewEnergy's request. We will accept Delmarva's revision to § 12.5.

Supplier Fees

AES has opposed Delmarva's general administration and historical usage fees for interval metered customers. Staff has not opposed these fees if permitted by the Commission, but observed in its filings that the fees appear to be supported by cost data provided by the Company.

Section 56-582 of the Act which establishes the parameters for capped rates states that capped rates shall "include rates for new services where, subsequent to January 1, 2001, rate applications for such services are filed by incumbent electric

utilities with the Commission" and are thereafter approved by the Commission. The instant application, to the extent that it requests the approval of fees for new services, falls within the meaning of this provision. Accordingly, we will permit the fees set out in the November 7, 2001 Electricity Supplier Agreement, tariffs and terms and conditions of service, with the exception of the fees for general administration and registration of CSPs proposed by Delmarva, which we do not find to be "new services" provided by the Company within the meaning of the Act and provided further that the Company makes various technical corrections to Appendix B to the Electricity Supplier Agreement.

There will certainly be additional costs of doing business in the new retail choice environment but like other cost increases,[6] they are not recoverable because of the capped rate limitation of the Act. When the Company is eligible to file its next distribution rate case, and we are free to examine both increasing and decreasing company expenses, we will then be able to consider the recovery of these costs.

With regard to the technical correction of Appendix B, a summary Schedule of Processing Fees and Charges, we find that Delmarva's charges for non-interval meter testing, interval meter testing and the historical usage data fees for non-

[6] Other than the adjustments permitted for the tax changes, fuel expense, and financial distress under § 56-582 B of the Code of Virginia.

interval metered customers should be corrected to conform with the bulk of the Company's tariffs.

Accordingly, IT IS ORDERED THAT:

(1) The Commission Staff, as necessary, shall conduct audits and reviews of the Company books, records, and work papers and conduct meetings to ensure compliance with § 56-590 of the Code of Virginia and the regulations put forth by the Commission in Case No. PUA000029.

(2) Except as modified herein and consistent with the discussion set out above, the revised unbundled rates, fees, charges, terms and conditions of service, and electricity supplier agreement found in Delmarva's November 7, 2001 filing with the Commission shall be adopted, effective for service rendered on and after January 1, 2002. The Company shall forthwith file the revised unbundled rates, fees, charges, electricity suppliers agreement, and terms and conditions approved herein with the Division of Energy Regulation.

(3) The Company's proposed fees for new services are reasonable and are adopted with the exception of the Company's proposed registration and general administration fees for competitive suppliers.

(4) The Company shall track the number of requests to switch CSPs made following special meter readings as well as customers complaints regarding this issue and report this

information to the Division of Energy Regulation by May 7 and November 27 of each year following AP's implementation of customer choice.

(5) This matter is dismissed.